tender, the acceptance, and any other relevant documents: see 3 *Halsbury's* Laws of England (3rd ed.) at page 423. In the instant case the contract documents as defined in clause 3 (*supra*) mean all documents forming the tender and acceptance together with the documents referred to therein, that is the drawings mentioned and annexed to the form of tender, the summary of tender including the tender table documents, the conditions of contract, the specification, schedule of rates and drawings, "and all these documents taken together shall be deemed to form the contract and shall be complementary to one another". The answer is therefore obvious even to the most indulgent eye. If I accede to the applicant's argument that the specification and the drawings must each be read separately and distinctly the answer would be inconsistent with the general tenor of the documents. The specification states that the contractor was to supply all materials, fittings etc. necessary for the execution and completion of the electric light and power installations. The installations are referred to in the summary of tender which describe "to include for all electrical fittings shown on the electrical layout drawings and described in the specification for 'electrical service' ". In the summary of tender, both the intent and meaning in the sense ascribed to them in clause 4 of the conditions of contract (*supra*) are clear, that is that the electrical installation as shown on the electrical layout drawings and described in the specification for electrical service is to be read into and form part of the contract. In the absence of any qualification as to electrical fittings it is not unreasonable to assume that the applicant had priced his tender inclusive of the electrical installation as shown on the electrical layout drawings. To read the electrical layout drawings in the sense contended for by the applicant gives them viability which amounts to a violation of clause 3 of the contract. I am not impressed by the arguments of the applicant that the electrical layout drawings are specific provisions which exist independently of and separate from the rest of the contract documents. For all these reasons I think the arbitrator came to the correct conclusion based on the evidence. In my judgment the alleged custom was not only a blind confidence of the most unreasonable description but also repugnant to the terms and tenor of the contract and as such was not a trade custom but merely a long established irregularity.

I therefore answer both the arbitrator's questions in the affirmative and that means the second award must stand.

Questions answered in the affirmative.

Solicitors: *Heng, Chen & Co.*

EAST ASIATIC CO. LTD. v. OTHMAN

[O.C.J. (Abdul Aziz J.) March 1, 1966]

[K.L. — Civil Suit No. 574 of 1965]

Sale of goods — Breach of contract — Question of damages — "Available market" — Sales of Goods Ordinance, 1957, s. 56 — Contracts (Malay States) Ordinance, 1950, s. 74.

The defendant had ordered a car from the plaintiff but defaulted in taking delivery. The plaintiff sued the defendant for breach of contract and claimed the sum of $1,312.30 being the difference between the agreed retail price of $6,390 and $4,477.69 which was the price at which the car was eventually sold.

Held: the plaintiff was entitled to be compensated for the loss of the profit and judgment should therefore be given for $1,312.31 cts.

Cases referred to:—

(1) *Lee Heng & Co.* v. *C. Melchers* [1963] M.L.J. 47.

(2) *Lee Hin* v. *Mohamed bin Abubakar* [1958] M.L.J. 25.

(3) *Thompson Ltd.* v. *R. Robinson Ltd.* [1955] 1 All E.R. 154.

CIVIL SUIT.

S. F. Wong for the plaintiff.

Defendant did not enter appearance.

Abdul Aziz J.: In this case the plaintiff applied by way of motion for the assessment of the damages suffered by the plaintiff as a result of the defendant's breach of agreement to take delivery of a new Fiat 1100 D Saloon in March 1965. Evidence as adduced by the plaintiff showed that the defendant placed an order for the purchase of one Fiat 1100 D motor car on 9th December 1964 at a cost of $6,498 to be delivered some time in March 1965. The defendant having defaulted in taking delivery of the car the plaintiff sued the defendant for breach of contract and claimed damages for breach of contract. Defendant not having appeared to the writ was adjudged to pay damages to the plaintiff the amount which was to be assessed by this court.

The plaintiff claimed that the damages from the breach of contract was the loss of profit of $1,312 being the differences between the agreed retail price of the car of $6,390 and $4,477.69 which was the price at which the car was eventually sold to Sharikat Fiat Distributors Limited which took over the agency of fiat cars from the plaintiff company.

In my view the case falls to be determined by section 56 of the Sale of Goods Ordinance 1957 and section 74 of the Contracts (Malay States) Ordinance 1950. Section 56 reads:—

"Where the buyer wrongfully neglects or refuses to accept and pay for the goods ordered by him the seller may sue him for damages for non-acceptance."

and the measure of damages is governed by section 74(1) which reads:—

"74. (i) When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."

The general purpose of the law is to give compensation, that is to put the plaintiff in as good a position as he would have been had the defendant performed the contract and the law speaks of compensation and not damages. Therefore the plaintiffs must show that they have suffered some loss or damage before compensation can be awarded. The plaintiff's contention, with which I agree, was that they suffered loss and the loss was the loss of bargain which they would have made if there was no breach — the loss being the difference between the sale price of the car and the price at which the car was eventually sold. The plaintiff contends (and the defendant is not here to refute it) that such make of car is not readily sold in the market and from past experience of the company only three to five units could be sold per month.

In *Lee Heng & Co.* v. *C. Melchers & Co.*[1] it was held that where the contract relates to goods for which there is a market the measure of damages is the difference between the contract price and the market price at the contracted date of delivery.

In *Lee Hin* v. *Mohamed bin Abubakar* [2] it was held that the damage which naturally arose from the respondent's breach was the plaintiff's loss of bargain, the measure of which would normally be the difference between the market value and the contract price. In the present case it was the plaintiff's contention that there was no available market.

In *Thompson Ltd.* v. *R. Robinson Ltd.*[3] the question as to what is an available market was considered. There the defendants agreed to purchase from plaintiffs a Standard Vanguard motor car and later repudiated the contract. The plaintiffs returned the car to their suppliers who did not seek compensation. The plaintiffs claimed damages for the breach of the agreement. It was held that the plaintiffs were entitled to be compensated for the loss of the bargain to the extent of the profit which they would have made, because the plaintiffs had, by reason of the breach of the contract, sold one motor car less than they would otherwise have sold. Upjohn J. said:—

"Had the matter been *res integra*, I think I should have found that an 'available market' merely means that the situation in the particular trade in the particular area was such that the particular goods could freely be sold and that there was a demand sufficient to absorb readily all goods that were thrust on it, so that if a purchaser defaulted, the goods in question could readily be disposed of.

I therefore agree that on the basis of the above-quoted cases the plaintiff is entitled to be compensated for the loss of profit of $1,312.31 i.e. $6,390 less $600 discount less $4,477.69 being the actual resale price of the car.

Consequently there will be an award for the plaintiff of $1,312.31 as compensation for breach of the agreement.

Order accordingly.

Solicitors: *Chooi & Co.*

RE CHONG AH KWAN CONSTRUCTION CO.; *EX PARTE* BAN AIK KEE CO.

[O.Bk.J. (MacIntyre J.) March 3, 1966]

[Ipoh — In Bankruptcy No. 77 of 1965]

Bankruptcy — Petition — Notice — Opposition to petition — Bankruptcy Rules, rules 107, 215 and 216 — Bankruptcy Ordinance, 1959, ss. 5(1), 6(7), 47 & 131.

The petition for bankruptcy in this case was opposed on the following grounds: (a) that the bankruptcy notice was bad in law as it did not state the name of the partner or partners of the judgment creditor firm; (b) that the bankruptcy petition was bad for want of an accompanying affidavit verifying the concurrence of all the partners of the judgment creditor firm to the institution of the bankruptcy proceedings; (c) that the bankruptcy petition was no longer maintainable by virtue of the acceptance by the judgment creditors of a sum of $2,000 on account of the judgment debt; (d) that the service of the petition by substituted service was not properly effected as the copy posted was not signed by the petitioner.

Held: (1) the bankruptcy notice in this case contained the name and business address of the judgment creditors and there was no authority for the contention that the notice was bad for failure to specify the name of the partner or partners of the firm;

(2) rule 215 of the Bankruptcy Rules which requires an accompanying affidavit does not apply to legal proceedings instituted by a firm in its own name as was done in this case;

(3) as rule 216 of the Bankruptcy Rules provides that any one partner may sign a bankruptcy petition presented by a firm the argument that all the partners should have signed the petition must fail;

(4) in this case the petitioning creditors, who were aware of the act of bankruptcy, could not have acquired a valid title to the sum of $2,000 handed over to them and therefore notwithstanding the payment of $2,000 by the debtors to the creditor the debt due and owing was still the sum of $10,988.80 as mentioned in the petition;

(5) that the service of the petition in this case was valid as the copies of the petition were sealed, though not signed, but even if they should have been signed, the omission to do so was an irregularity which could be cured by section 131 of the Bankruptcy Ordinance.

Cases referred to:—

(1) *Buckland and others, Assignees* v. *Newsame* 1 Tauton 919; 127 E.R. 477.

(2) *Ananta Kumar Saha v. Sadhu Charan Saha Poddar* A.I.R. 1926 Cal. 234.

(3) *In re Bagley* [1911] 1 K.B. 317.

(4) *In re Child* [1892] 2 Q.B. 77.